

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 11, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:07od-206

OAHU

Waiver of Restriction – Land Office Deed No. S-28594, University of Hawaii,
Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-016:120, por.127 & 129

APPLICANT:

University of Hawaii – West Oahu, whose business and mailing address is 96-129 Ala
'Ike, Pearl City, Hawaii 96782.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

HRS §171-95(a)(6) states that the Board may: "[w]aive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever such waiver or modification is beneficial to the State."

LOCATION:

Portion of Government land situated at Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-016:120, por.127 & 129, as shown on the attached map labeled Exhibit A.

AREA:

298 acres, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: AG-1 Restricted Agriculture

TRUST LAND STATUS:

Acquired after Statehood via condemnation (non-Trust lands)

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands (298 acres) are to be conveyed to a private entity and will become privately owned land when the transaction is completed. Chapter 343, HRS, would not apply to any future development of the subject lands as no State lands would be involved.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Process and obtain subdivision approval from the City and County of Honolulu and the Land Court of the State of Hawaii, all at Applicant's own cost.

REMARKS:

On September 27, 2002, under agenda item D-8, the Board approved the fee conveyance of 500.327 acres to the University of Hawaii (UH) for its West Oahu Campus. On November 8, 2002, Land Office Deed No. 28594 (LOD) was signed to effectuate the conveyance.

UH has entered into an agreement with Hunt Building Corporation and Hawaii Renaissance Builders LLC (collectively Hunt) under which Hunt agreed to purchase about 298 acres of the land conveyed under the LOD for \$100 million. A map attached as Exhibit B shows the respective locations of UH and Hunt lands. The proceeds of the sale will be used to finance the development and construction of the infrastructure and facilities for the UH West Oahu campus.

UH and Hunt are concerned that two conditions in the LOD may hinder the proposed transaction between UH and Hunt. As such, UH is requesting the Board to remove the restrictions imposed by Conditions 2 and 3 of the LOD with respect to the 298-acre portion of land to be conveyed to Hunt (see letter from UH dated August 30, 2007 attached as Exhibit C).

The text of Conditions 2 and 3 are as follows:

Condition 2

"The use of the land shall be in combination, consolidation, or otherwise with other abutting lands owned by the Grantee and shall be used in accordance with the appropriate zoning and subdivision ordinances of the City and County of Honolulu."

Condition 3

"In the event the University of Hawaii does not use the land or generate revenues from the use of the land for West Oahu campus purposes as determined by the University Board of Regents, the land shall revert to the ownership of the Department of Land and Natural Resources."

Condition 2 which requires the proposed use to be " ... in combination, consolidation, or otherwise with other abutting lands owned by the Grantee ... " raises concerns from UH and Hunt. UH will use its portion for educational purpose, whereas Hunt plans to develop residential, mixed-use, elementary school, electrical substation, parks etc on its portion of land. The different types of uses proposed by UH and Hunt respectively may not be regarded as "in combination, consolidation" with each other. To streamline the proposed transaction, UH is asking the Board to release this consolidation portion in Condition 2 of the LOD.

Staff cannot locate any correspondence in the file regarding any reasons for inserting Condition 2 in the LOD. Staff notes that similar condition may be necessary if the subject land is a remnant which the law mandates the consolidation process. Staff does not believe Condition 2 is appropriate in this context. Nevertheless, UH has submitted an application for a change in the zoning from the City & County of Honolulu. Hunt, being a private entity, will have to obtain all the approvals e.g. subdivision, from the City & County of Honolulu. Therefore, staff recommends the Board to adopt a revised version of Condition 2, which now reads, "The use of the land shall be in accordance with the appropriate zoning and subdivision ordinances of the City and County of Honolulu" with respect to the 298 acres.

With respect to Condition 3, staff understands that it had been previously contemplated that UH may sell a portion of the land conveyed by the LOD to finance the development of the West Oahu campus. However, the reversionary clause in Condition 3 was inserted at the time (2002 Board meeting) when UH was still in its planning stage of the new campus and there was still some uncertainty as to whether the campus would be actually constructed on the subject lands. To date, staff is not aware of any timeline for the construction phase of the West Oahu campus. However with the commitment by Hunt for \$100 million and an allotment of \$35 million released by the Governor, staff believes the development of new campus now becomes more imminent, and the reversionary clause is no longer necessary.

As cited in UH's letter at Exhibit C, " ... it was evident that the Ewa and Leeward Oahu regions were often ranked as the most underserved regions within State according to a number of indicators. It is therefore critical for the University to build the UH West Oahu campus to meet this demonstrated need."

Section 171-95(a)(6), HRS provides that the Board may "[w]aive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever such waiver or modification is beneficial to the State". Staff believes removing the restrictions imposed by Conditions 2 and 3 with respect to the 298 acres would be beneficial to the State as it would facilitate the development of the West Oahu campus.

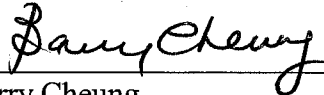
The Board's approval of the subject request, would be subject to the requirement that UH subdivide the 298 acres from its original 500+ acres before the transaction with Hunt is consummated. In addition, relevant survey maps and legal descriptions of the 298 acres, together with evidence of subdivision approvals from the City and County of Honolulu and the Land Court of the State of Hawaii, must be submitted by UH to this department before the necessary documentation releasing Conditions 2 and 3 is prepared.

Staff did not solicit comments from other agencies, and staff has no objection to the request.

RECOMMENDATION: That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above, for the 298 acres to be conveyed to the private entity:

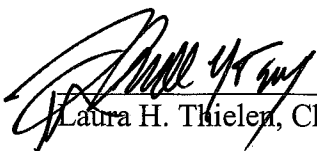
1. Authorize Condition 2 of LOD 28594 be amended as follows:
" The use of the land shall be in accordance with the appropriate zoning and subdivision ordinances of the City and County of Honolulu."
2. Authorize the waiver of Condition 3 in Land Office Deed No. 28594;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

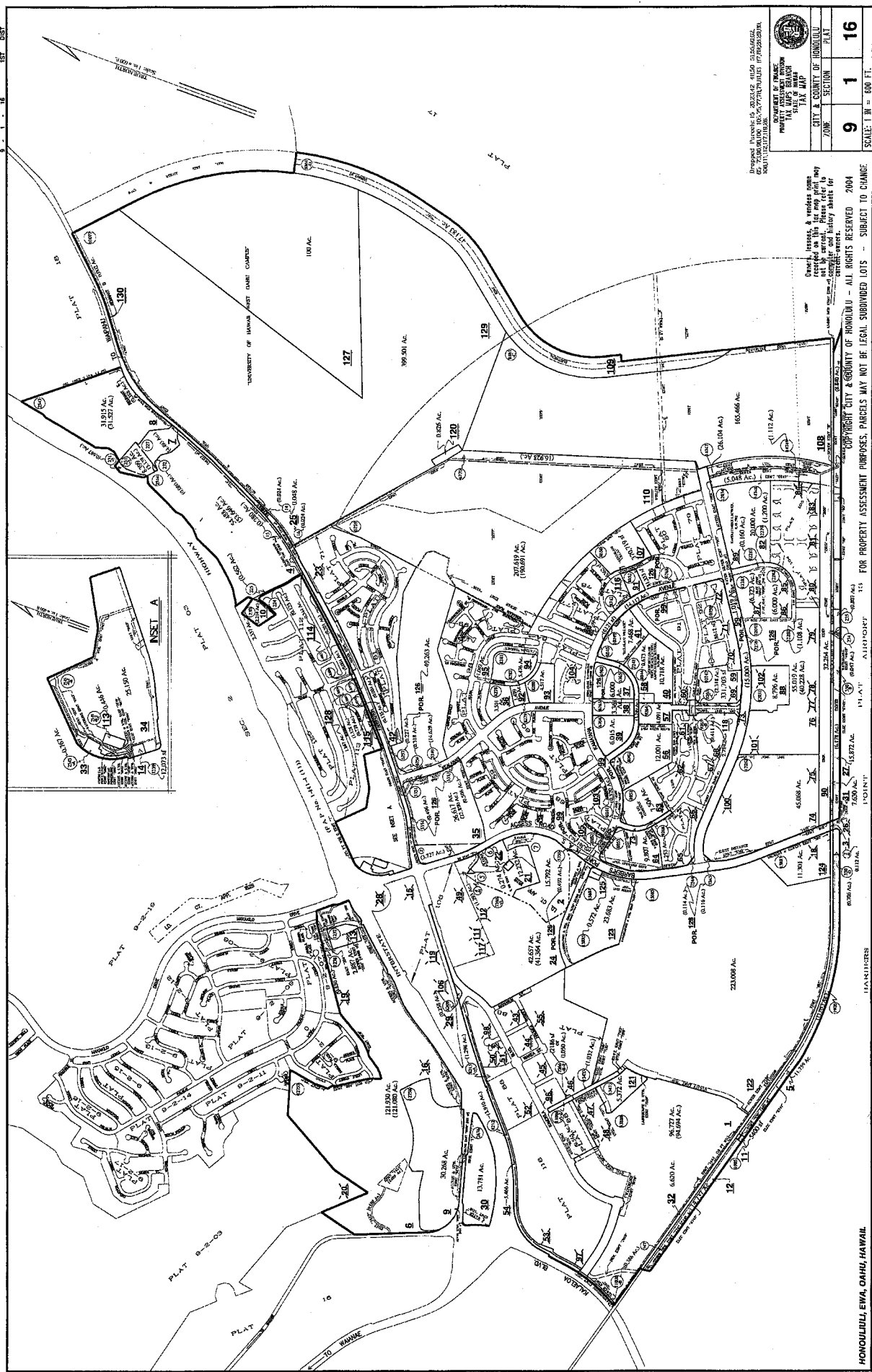


Barry Cheung
District Land Agent


APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



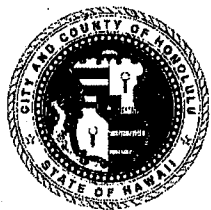
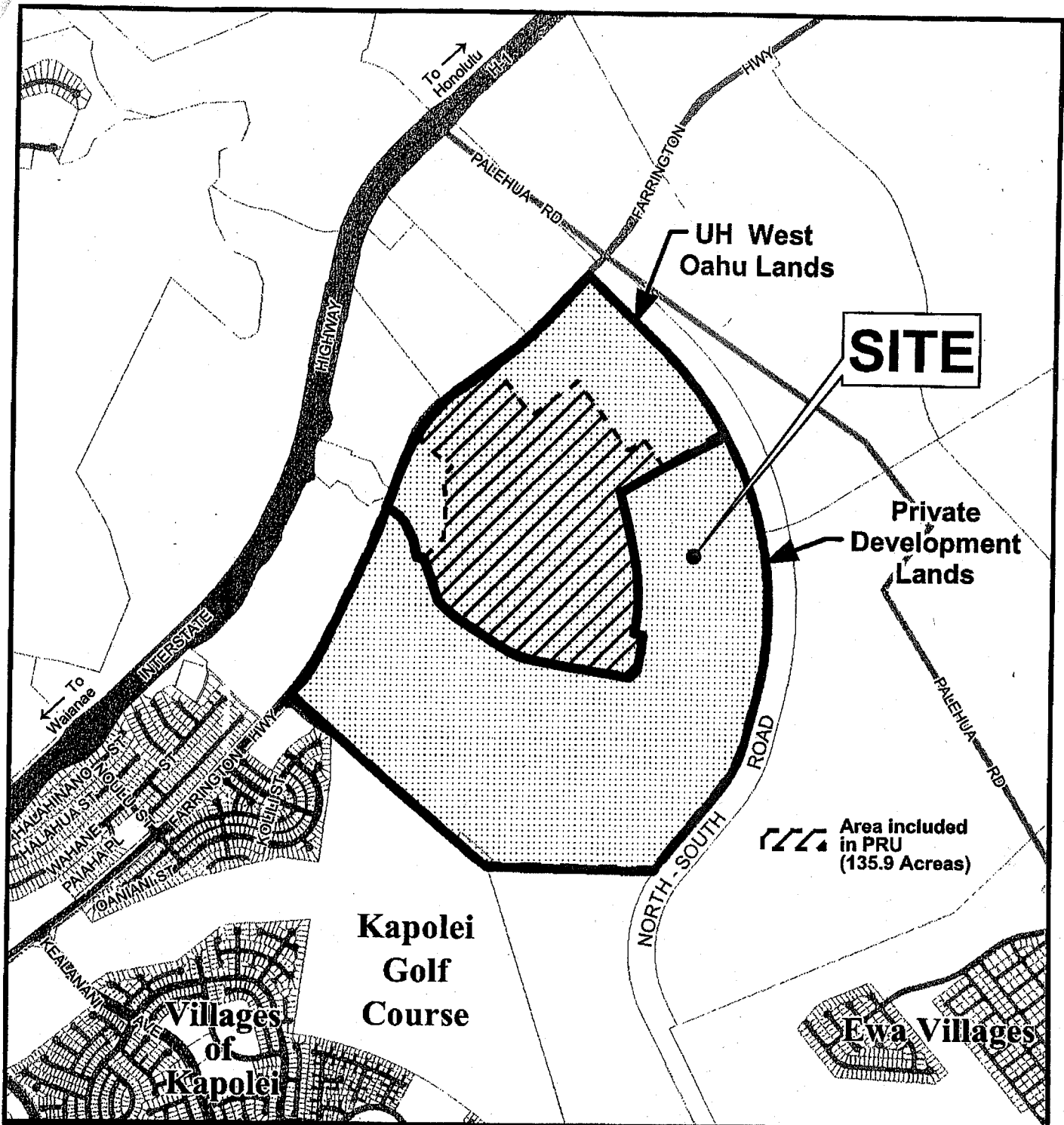
DEPARTMENT OF FINANCE
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STREET MAP
TAX MAP



CITY & COUNTY OF HONOLULU	
ZONE	SECTION
9	1
16	

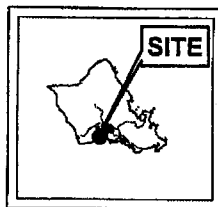
SCALE: 1" = 600 FT.

EXHIBIT "A"



1,500 750 0 1,500

Scale in Feet



VICINITY MAP

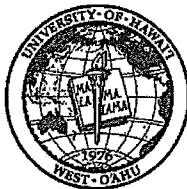


LOCATION MAP

HONOLULU - EWA

TAX MAP KEY(S): 9-1-16: 120,127&129

FOLDER NO.: 2007/Z-6 & 2007/PRU-3



UNIVERSITY OF HAWAII-WEST O'AHU

OFFICE OF THE CHANCELLOR

August 30, 2007

The Honorable Laura Thielen
Interim Chairperson
Department of Land & Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Dear Ms. Thielen:

RE: University of Hawai'i - West O'ahu

DEED from State of Hawai'i to University of Hawai'i, dated November 8, 2002 for an Area of 500.327 acres, TMK No. (1) 9-1-16:por. 108 and 120, Lot 10077 (Deed)

This is an exciting time for us here at the University of Hawai'i - West O'ahu. We are welcoming our first incoming freshman class and implementing our first baccalaureate program. We have secured a physical presence in the Kapolei area by renting brand new state-of-the-art classroom space in the evenings from Island Pacific Academy. The Governor graciously released an allotment of \$35 million toward the development of the first campus for the University in quite some time.

Finally, we have also entered into an agreement dated August 20, 2007, under which Hunt Building Corporation (Hunt) and Hawai'i Renaissance Builders LLC (a Hunt affiliate) (collectively Hunt) agreed to purchase about 298 acres of land (298 Acres) from the University for about \$100 million (Agreement). After the purchase of the 298 Acres is completed, the University will have about 200 acres remaining for UH West O'ahu campus development out of the 500 acre parcel that had been conveyed in fee simple to the University by the Board of Land and Natural Resources (Land Board) by deed dated November 8, 2002 (Deed). The sale proceeds will be used to finance the development and construction of infrastructure and facilities for the UH West O'ahu campus.

The University recently completed our Second Decade Report whose purpose was to identify the higher education needs in the State of Hawai'i for the next decade

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and determine the relative priority of state higher education needs within the State by region. Based on the report, it was evident that the Ewa and Leeward O'ahu regions were often ranked as the most underserved regions within the State according to a number of indicators. It is therefore critical for the University to build the UH West O'ahu campus to meet this demonstrated need.

We thank you for your past support of the University, and the UH West O'ahu in particular, as a member of the Board of Education and as the Director of the Office of Planning. The University and UH West O'ahu again needs your help and support to make the UH West O'ahu campus a reality.

Under the Agreement, the University is obligated to convey the 298 Acres to Hunt. The closing of the sale to Hunt is conditioned upon the University obtaining Land Board approval to delete, with respect to the 298 Acres, the covenant in the Deed that requires title to the 298 Acres to revert or be returned to the Land Board if the subject property is not used for "West O'ahu campus purposes . . ." To accomplish this, we would appreciate your help in recommending to the Land Board that the reversionary covenant in the Deed be deleted. This would enable Hunt to proceed with its development plans for the 298 Acres and the University to maintain momentum toward completing the infrastructure and facilities for the new UH West O'ahu campus.

This property covered by the Deed is located in East Kapolei and is bounded by the future North-South Road, Farrington Highway, Kapolei Golf Course, and property to be conveyed (if not already done so) by the Land Board to the Department of Hawaiian Home Lands. The parcel is legally described as Lot 10077 of Map 785 of Land Court Application 1069 (Property).

The Property was transferred to the University for the development of its West O'ahu campus and it was always contemplated that the University would use revenues generated from the Property to finance such development. In fact, the reverter condition in the Deed requires the University to either use the land or generate revenues therefrom for West O'ahu campus purposes or return the Property to the Land Board:

3. In the event the University of Hawai'i does not use the land or generate revenues from the use of the land for West O'ahu campus purposes as determined by the University Board of Regents, the land shall revert to the ownership of the Department of Land and Natural Resources.

Moreover, over the past 15-20 years, the State of Hawai'i and the Trustees of the Will and of the Estate of James Campbell (Deceased), as predecessor to the James Campbell Company LLC (Campbell Estate) engaged in land transfers and exchanges in the Kapolei area. Throughout this process, it was clear that Campbell Estate (and now its successor, the James Campbell Company LLC), desired to have the University construct its West O'ahu campus in the Kapolei area. Campbell Estate in fact imposed this as a requirement upon the University. If the University fails to meet this requirement, the University could be subject to certain consequences such as returning land, providing replacement land, or paying fair market value for land already acquired by the State.

Removing the reverter condition would enable the University to close the sale of the 298 Acres, which in turn would provide funding to enable the University to complete planning and design and initiate construction of the University's West O'ahu campus. This is essential to the University's efforts to: (a) fulfill this condition on behalf of the State and (b) avoid the consequences of not timely meeting Campbell Estate's deadline.

The Deed also contains a condition that requires the University's "use of the land shall be in combination, consolidation, or otherwise with other abutting lands owned by the Grantee and shall be used in accordance with the appropriate zoning and subdivision ordinances of the City and County of Honolulu." Because the University is selling a portion of the Property (298 Acres) to Hunt, and Hunt has its own plans to develop the 298 Acres, it would not be appropriate or in the best interest of the State or the University to require that the Hunt development be so closely bound (legally and physically) to the University's development of its West O'ahu campus. Therefore, we request that this consolidation condition be removed and released as to the 298 Acres to be conveyed by the University to Hunt.

Moreover, since the time of the conveyance of the Property to the University in November 2002, the Legislature enacted what is now H.R.S. § 304A-2166, which (a) establishes a West O'ahu special fund, (b) requires that all net proceeds from sale of lands or development rights and all net rents from leases, licenses, and permits from the Property be deposited into this special fund, and (c) requires the moneys

comprising this fund be used solely for planning, development, and construction of the West O'ahu Campus in Kapolei.¹

Given (i) the mandate of H.R.S. § 304A-2166, (ii) the University's obligation to convey the 298 Acres to Hunt, and (iii) the obligation of the State and the University to construct its West O'ahu campus in Kapolei, the University requests that both the reverter and consolidation conditions identified above be released and removed from all title documents for the Property and that appropriate documentation reflecting the

¹ [§ 304A-2166] University of Hawai'i -West O'ahu special fund. (a) There is established the University of Hawai'i -West O'ahu special fund. The proceeds of the special fund shall be used for the following purposes:

- (1) Planning, land acquisition, design, construction, and equipment necessary for the development of the permanent campus of the University of Hawai'i-West O'ahu in Kapolei; and
- (2) Planning, land acquisition, design, improvement, and construction of infrastructure and other public or common facilities necessary for the development of the permanent campus of the University of Hawai'i - West O'ahu in Kapolei.
- (b) The following shall be deposited into the special fund:
 - (1) Appropriations by the legislature to the special fund:
 - (2) All proceeds from the sale of public lands, all net rents from leases, licenses, and permits, or all net proceeds derived from development rights for public lands:
 - (A) Proposed for large lot subdivision as a five hundred acre parcel and designated as Lot 100077 in Land Court Application 1069; and
 - (B) Obtained from the Campbell Estate in the land exchange, described in section 2 of Act 294, Session Laws of Hawai'i 1996, located mauka of the H-1 Freeway and consisting of nine hundred forty-one acres, more or less; and
- (3) Interest earned or accrued on moneys in the special fund.
- (c) The fund shall be managed by the University, which shall also make expenditures from the fund.
- (d) Notwithstanding any other law to the contrary, no moneys from the special fund may be expended for any purposes other than the purposes set forth herein unless otherwise approved by the legislature.

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release of this reverter and consolidation conditions be prepared, executed and recorded. Your department's assistance in accomplishing this is appreciated.

We look forward to working with you again as we move toward making the long-planned and critically needed West O'ahu campus a reality. Should there be any questions or comments concerning any of the foregoing, please feel free to contact me at 454-4750 or our project manager, Allan Ah-San at 692-0918.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gene I. Awakuni". The signature is fluid and cursive, with the first name "Gene" being the most prominent.

Gene I. Awakuni
Chancellor